



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P (MD) No.4551 of 2020

R.Chithu

... Petitioner/Accused No.3

Vs

1.The State Represented by
The Inspector of Police,
Thuvakudi West Police Station,
Trichy District. ... 1st Respondent/Complainant

2.B.Keerthana ... 2nd Respondent/Defacto Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to direct the 2nd Additional District Judge, Trichy to consider the petitioner's application for recalling the warrant to be filed by him in connection with in Cr.M.P.No.379 of 2020 in S.C.No.33 of 2014, order dated 24.01.2020 on the file of the 2nd Additional District Judge, Trichy on the same day on merits by allowing this petition.

For Petitioners : Mr.C.M.Arumugam

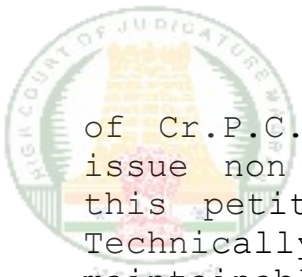
For R1 : Mr.A.Robinson
Government Advocate (Crl.side)

ORDER

The petitioner is figuring as A3 in S.C.No.33 of 2014 on the file of the Second Additional District Judge, Trichy.

2.The petitioner had earlier filed Crl.O.P.(MD)No.16923 of 2018 for recall of warrant. The same was allowed by this Court vide order dated 11.09.2018 with a direction that the petitioner should appear before the trial Court and apply for recall of warrant and the said petition was to be considered and disposed of on the same day. This Court had recorded the petitioner's undertaking that he would appear before the Court below regularly on all the future hearing dates without fail.

3.While so, there was no appearance on the behalf of the petitioner on 24.01.2020. But then, a petition under Section 317



of Cr.P.C. was filed. The Court below dismissed the same and issue non bailable warrant against the petitioner. Therefore, this petition has been filed for recall of the said warrant. Technically speaking, this criminal original petition is not maintainable.

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4. When the petitioner's petition under Section 317 of Cr.P.C was dismissed, the only course open to the petitioner was to challenge the dismissal order by filing a revision case. Instead of doing so, the petitioner had filed the petition under Section 482 of Cr.P.C.

5. However, I am of the view that instead of adopting technical approach, this Court would rather look into the matter substantially. It is true that the petitioner had given an undertaking that he would appear before the Court below regularly. However, it is not as if this undertaking was breached. The petitioner's counsel had attended and appeared on behalf of the petitioner and also filed a petition under Section 317 of Cr.P.C. This Court wanted to know as to whether on account of the absence of the petitioner, the progress of the case was affected. It is not in dispute that it was only a formal hearing. In fact, non bailable warrant was said to be pending against the three other accused.

6. The petitioner's counsel states that he is ready to face the trial, if the case is split up against him. Since the other accused are absconding, the petitioner wants to secure himself. The petitioner is working in Thiruppur. If the Court below is ready to split up the case, he is ready to appear in person. It is not as if the petitioner wants to delay the progress of the case.

7. I am satisfied with the explanation given by the learned counsel appearing for the petitioner. The physical appearance of the party need not be insisted upon, unless it is necessary and imperative. I can understand that if the other accused have been apprehended and on account of the petitioner's absence, the case got delayed. That is not the factual position. I direct the petitioner to appear before the trial Court on 19.03.2020 and apply for recall of warrant. The learned trial Judge will recall the warrant on the same day. The petitioner, however, clearly states that if he is directed by the Court below to appear in person for the purpose of answering the charges or for the purpose of splitting the case, he would readily comply with the said condition.



8. Recording the petitioner's undertaking, this petition is allowed. Till then, non bailable warrant shall be kept in abeyance.

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Sd/-

Assistant Registrar(CS-III)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1. The second Additional District Judge, Trichy

2. The Inspector of Police,
Thuvakudi West Police Station,
Trichy District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CrI.O.P (MD) No.4551 of 2020
13.03.2020

DB(CO)

TR(16.03.2020) 3P 4C